

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1-54 are pending, with Claims 3-5, 7, 16, 18, 19, 40 and 46-54 withdrawn from consideration.

With this Amendment, Claims 1, 13 and 38 have been amended and Claims 14-37 have been canceled.

**Amendment to the Specification**

The specification has been amended on page 5 to add further details to the Summary of Invention consistent with the Claims.

The Figure Description of Fig. 4 has been amended to more accurately describe the drawing.

The definitions of "low tension zone," "high tension zone," and "no tension zone" have been amended to replace "stretch-bonded laminate material" with --TEM--

A number of trademarks have been amended to appear in all capital letters, without a trademark symbol.

A typographical error has been corrected on page 13, and item 257 was added to page 49.

On page 50, language was added to clarify the description of Figure 12 regarding items 374 and 376.

The U.S. Patent number has been added for a corresponding U.S. serial number on page 50.

In response to the Examiner's question about element numbers 54 and 56 in Figure 3 and whether they should be dashed to denote underlying structure, on page 20, lines 11-12, the specification specifies that, the waist elastic members 54 and 56 can be operatively joined to the outer cover 40, and page 6, lines 5-6, specifies that Figure 3 shows the side facing away from the wearer, i.e. the outer cover. No correction to Figure 3 is necessary.

In response to the Examiner's comment about Figure 12, Figure 12 was correct as filed with respect to items 374 and 376 and has not been amended. Rather the specification on page 50 has been amended (as previously mentioned) to more clearly describe the figure. However, a missing figure number 342 has been added to Figure 12.

No new matter has been added.

#### **Amendment to the Claims**

Claims 1, 2, 6, 8-15, 17, 20-39 and 41-45 have been rejected, with no claims being allowed. Claims 1, 13 and 38 have been amended. Claims 14-37 have been canceled. Applicants respectfully believe these amendments overcome the Examiner's claim objections.

Applicants have amended Claims 1 and 38 to include the limitation of the absorbent composite structure comprising an absorbent assembly positioned between a bodyside liner and an outer cover. Support for this amendment is provided at page 18, lines 5-9.

Applicants have also amended Claims 1 and 38 to include the limitation of at least the front or back side panels being permanently bonded to and extending transversely beyond an associated linear side edge of the absorbent composite structure. Support for this amendment is provided at page 22, lines 3-11, of the specification.

Applicants have also amended Claims 1 and 38 to include the limitation of the targeted elastic material in at least each of the front side panels or at least each of the back side panels. Support for this amendment is provided at page 23, line 20 to page 24, line 14 of the specification.

Claim 13 has also been amended to change the word "the" to --each-- before "waist end edge."

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims also remains unchanged.

**Claim Objections**

Claims 21-23 and 25-27 have been canceled. Therefore, the claim objections are moot, and should be withdrawn.

**Claim Rejections - 35 U.S.C. §112**

The rejection of Claims 1-2, 6, 8-15, 17, 20-39 and 41-45 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention is respectfully traversed.

Applicants have amended Claims 1 and 38 to clarify that either both of the front side panels, or both of the back side panels, or all of the front and back side panels include the targeted elastic material.

Applicants have amended Claims 1, 13 and 38 to change “the waist end edge” to read --each waist end edge--.

For at least the reasons given above, Applicants respectfully submit that currently amended Claims 1, 13 and 38, and the claims depending therefrom, are not indefinite. Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection

**Claim Language Interpretation**

On pages 5-6 of the Office Action the Examiner states that with respect to the definitions of “targeted elastic regions,” “targeted elastic zones,” “targeted elastic material,” and “targeted elastic laminate” that “i.e., the elastic is made in the same process as is the elastic material or laminate made therefrom.” Applicants clarify, however, that a targeted elastic material has no separate “elastic” per se. The Examiner is correct that there is a single manufacturing process as specified on page 9, lines 9-12, of the specification. However, certain regions or zones of the targeted elastic material “have greater elastic tension than adjacent or surrounding regions or zones.” (Page 9, lines 5-7).

In addition, on page 6 of the Office Action the Examiner states that “side panels extending therefrom” is interpreted as “being where the absorbent and

the layer are no longer coextensive.” Applicants assume that the Examiner means the instance where the absorbent composite structure and the side panels are not integrally formed, i.e., they include two or more separate elements, and is referring to page 18, lines 3-5 of the specification which specifies that the composite structure 33 and side panels 34 and 134 can be integrally formed or can include two or more separate elements. Applicants have also amended Claims 1 and 38 to require that the front side panels or the back side panels are permanently bonded to and extend transversely bond a linear side edge of the absorbent composite.

#### **Claim Rejections - 35 U.S.C. §102**

The rejection of Claims 1-2, 6, 8-15, 17, 20-39 and 41-45 under 35 U.S.C. §102(b) as being anticipated by Van Gompel et al. (EP 0 743 052 A2) is respectfully traversed.

Van Gompel et al. disclose a disposable three-dimensional garment having a full outer cover.

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. Van Gompel et al. do not disclose each and every element or limitation of currently amended Claims 1 and 38. Applicants' invention as recited in independent Claims 1 and 38, as amended, requires that the front and/or back panels include a targeted elastic material and that the front and/or back panels are permanently bonded to and extend transversely beyond a linear side edge of an absorbent composite structure. As recognized by the Examiner on pages 5-6 of the Office Action, Applicants have described the absorbent composite structure at page 18, lines 3-9, as including an outer cover, a bodyside liner, and an absorbent assembly between the outer cover and the bodyside liner. Additionally, Claims 1 and 38 explicitly require the absorbent composite structure to comprise an absorbent assembly positioned between the outer cover and the bodyside liner.

Van Gompel et al. do not disclose side panels that include targeted elastic material, nor do Van Gompel et al. disclose side panels that are permanently bonded to and extend transversely beyond a linear side edge of an absorbent composite structure. Instead, in Van Gompel et al., the outer cover fully encompasses

the garment (Abstract; Col. 2, lines 1-3; Col. 4, lines 1-3). Thus, no side panels or portions of side panels extend transversely beyond a linear side edge of the outer cover in the garment of Van Gompel et al.

As also recognized by the Examiner on page 5 of the Office Action, Applicants have defined the term “targeted elastic material” (“TEM”) at page 9, lines 8-14. More particularly, TEM is a single elastic material or laminate having targeted elastic regions. TEM’s include only materials or laminates which are made in a single manufacturing process, and which are capable of exhibiting targeted elastic properties without requiring an added elastic band or layer in the targeted elastic region. TEM’s do not include materials having elasticized regions achieved through separate manufacture of an elastic band, and subsequent connection of the elastic band to the underlying material.

The manufacturing process described in Van Gompel et al. at Col. 7, lines 32-54, and cited by the Examiner in the third to last line of page 7 of the Office Action, recites separate manufacture of an elastic band (i.e., layer 48), and subsequent connection of the elastic band to the underlying material. Although the elastic band is not activated at the time of attachment, the elastic band is, nevertheless, applied to the underlying material subsequent to manufacture. As described by Van Gompel et al., the stretchable side members do not include targeted elastic material because the stretchable side members require more than a single manufacturing step to create the stretchable side members. More particularly, the stretchable side members require the separate steps of (1) combining the nonwoven layer and the heat-shrinkable layer, (2) incorporating the combined layers into a garment, and (3) thermally bonding the garment to activate the heat-shrinkable layer. Thus, Van Gompel et al. fail to disclose a targeted elastic material.

In addition, Van Gompel et al. fail to disclose a spacer zone between a high tension zone and a waist end edge of a side panel.

For at least the reasons presented above, Applicants respectfully submit that Claims 1 and 38 are not anticipated by Van Gompel et al. Because Claims 2, 6, and 8-13 depend from Claim 1, as amended, and Claims 39 and 41-45 depend from Claim 38, as amended, these claims are also not anticipated by Van

Gompel et al. Claims 14-37 have been canceled. Thus, Applicants respectfully request withdrawal of this rejection.

### **Double Patenting Rejections**

#### **A. U.S. Application No. 09/855,188**

The provisional rejection of Claims 1-2, 6, 8-15, 17, 20-39 and 41-45 under the judicially created doctrine of obviousness-type double patenting over claims 1-19, 21, 50-59 of copending U.S. Application No. 09/855,188 in view of Van Gompel et al. (EP 0 743 052) and Bunnelle et al. (U.S. Patent No. 4,418,123) is respectfully traversed.

The present application and U.S. Application No. 09/855,188 are pending. Allowable subject matter, notwithstanding the provisional obviousness-type double patenting rejection, has not been indicated in either of these applications. Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is made between two or more applications, M.P.E.P. §804(I)(B) states that “[i]f the ‘provisional’ double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the ‘provisional’ double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.” It is not evident which of the pending applications will become allowable first. Therefore, any action by Applicants with regard to this provisional rejection is premature.

#### **B. U.S. Application No. 09/855,189**

The provisional rejection of Claims 1-2, 6, 8-15, 17, 20-39 and 41-45 under the judicially created doctrine of obviousness-type double patenting over claims 1-24 and 49-58 of copending U.S. Application No. 09/855,189 in view of Van Gompel et al. (EP 0 743 052) and Bunnelle et al. (U.S. Patent No. 4,418,123) is respectfully traversed.

The present application and U.S. Application No. 09/855,189 are pending. Allowable subject matter, notwithstanding the provisional obviousness-type double patenting rejection, has not been indicated in either of these applications.

Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is made between two or more applications, M.P.E.P. §804(I)(B) states that “[i]f the ‘provisional’ double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the ‘provisional’ double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.” It is not evident which of the pending applications will become allowable first. Therefore, any action by Applicants with regard to this provisional rejection is premature.

#### **Statement Concerning Common Ownership**

In response to the Examiner’s assertion that Claims 1-2, 6, 8-15, 17, 20-39 and 41-45 are directed to an invention not patentably distinct from Claims 1-19, 21, and 50-59 and Claims 1-24 and 49-58 of commonly assigned copending U.S. Application Nos. 09/855,188 and 09/855,189, respectively, Applicants’ undersigned attorney hereby states that U.S. Application Nos. 09/855,188; 09/855,189; and 10/015,935 were, at the time the invention of Application No. 10/015,935 was made, owned by Kimberly-Clark Worldwide, Inc.

*Note  
2-24-03*

#### **Prior Art**

Applicants respectfully request that some prior art references, which were previously submitted to the Examiner, be made of record.

1. On 20 July 2003, Applicants filed an Electronic Information Disclosure Statement which included, among other references, the following citations: (46-50 on one of a multi-part submission): U.S. 5,334,437, U.S. 5,334,446, U.S. 5,336,545, U.S. 5,336,552, U.S. 5,342,469.

In the Office Action, the Examiner included a copy of the Electronic Information Disclosure Statement (copy attached) in which these citations were not initialed, instead of being made of record. No reason for this action was provided in the Office Action or its attachments. Applicants believe that these references were properly cited. Applicants request that these references be made of record.

2. On 15 August 2003, Applicants Submitted a Third Information Disclosure Statement which included, among other references, a) a citation (AN on page 2 of 14) and copy of EP 0 155 636; and b) pages 3-14.

a) In the Office Action, the Examiner included a copy of PTO Form 1449 in which the citation to EP 0 155 636 was crossed out and was not initialed (copy attached), instead of being made of record. No reason for this action was provided in the Office Action or its attachments. Although some handwritten notes appear in the right margin, Applicants cannot read the notes. Applicants believe that this reference was properly cited and made available. Applicants request that this reference be made of record.

b) In the Office Action, the Examiner included a copy of PTO Form 1449 but only pages 1 and 2 of 14 pages were included in the Office Action. Copies of pages 3-14 of PTO Form 1449 are attached. Applicants request that these references be made of record.

**Conclusion**

Applicants believe that this case is now in condition for allowance. If the Examiner feels that any issues remain, then Applicants' undersigned attorney would like to discuss the case with the Examiner. The undersigned can be reached at (847) 490-1400.

Respectfully submitted,

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**Attachments**